



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

MAR 17 2010

OFFICE OF PETITIONS

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of :
Yamada, et al. : LETTER REGARDING
Application No. 09/733,332 : PATENT TERM ADJUSTMENT
Filed: December 8, 2000 :
Atty. Docket No. 09812.0475- :
0000 :

This is a decision on the "Notice of Possible PTO Error in the Determination of Patent Term Adjustment and Request for Clarification of Calculation" filed September 23, 2009, which is being treated as a request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy in view of applicants' duty of good faith and candor to the Office.

The request for review of the patent term adjustment is
DISMISSED.

On June 29, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 925 days. The instant comment was filed on September 23, 2009. Applicants surmise that the patent term adjustment of 925 days appears to be longer than appropriate and, that based on applicants' calculation, the patent term adjustment should be 924 days. Applicants did not specifically state how applicants believe the alleged miscalculation occurred.

A review of the application reveals no circumstances that would warrant entry of an additional 1 day reduction to the patent term adjustment. It is noted that applicants filed an amendment after final rejection on January 3, 2007, three months and 1 day after a final Office action was mailed on October 2, 2006. It is further noted that, by an Advisory Action mailed February 1, 2007, applicants were informed that the amendment after final rejection was not entered because the amendment failed to place

the application in condition for allowance. As the amendment filed January 3, 2007, was not in compliance with 37 CFR 1.113(c), the period for reply to the final Office action, pursuant to 37 CFR 1.704(b), continued to run. Thus, entry of any reduction to the patent term adjustment would not have been proper at this point. The proper reply to the final Office action, a Request for Continued Examination, was not filed until February 9, 2007. The patent term adjustment was reduced by 38 days, pursuant to 37 CFR 1.704(b), for applicant delay for the period beginning January 3, 2007, the day after the date that is three months after the mailing date of the final Office action, and ending on February 9, 2007, the date the reply in compliance with 37 CFR 1.113(c) was filed.

Thus, it is concluded that entry of an additional 1 day reduction of the patent term adjustment is not warranted.

In view thereof, the patent term adjustment of 925 days as indicated by the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed June 29, 2009, will not be changed.

As this letter was submitted as an advisement to the Office of an error in the calculation of the Patent Term Adjustment, the Office will not assess the \$200.00 application fee under 37 CFR 1.18(e). The Office thanks the applicants for the applicants' good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions